



Workplace Determinations

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* amends the *Fair Work Act 2009* to ensure that, when deciding the terms of an intractable bargaining workplace determination, the Fair Work Commission cannot include a term that is less favourable to employees or employee organisations when compared against a term in an existing agreement that deals with the matter. The amendments also increase the scope for bargaining representatives to reach ‘agreed terms’, which must be included in any intractable bargaining workplace determination made by the Fair Work Commission.

What has changed?

The amendments require terms that the Fair Work Commission (the Commission) includes in an intractable bargaining workplace determination (other than wage increase terms), which have not been agreed between the parties, to be **not less favourable** to an employee or employee organisation than corresponding terms in an existing enterprise agreement which applies to them.

The amendments also seek to increase the scope for the parties to agree to terms that will be included in any **intractable bargaining workplace determination**. Terms agreed at any of the following points will be ‘agreed terms’ and included in the determination: when an application for an intractable bargaining declaration is lodged, when the intractable bargaining declaration is made, and at the end of any post-declaration negotiating period, if there is one.

What do these changes mean?

Changes made to the *Fair Work Act 2009* (the Act) by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* empowered the Commission to resolve intractable bargaining disputes sooner by making an intractable bargaining declaration on application by a single bargaining representative. If an intractable bargaining declaration is made, the Commission must make an intractable bargaining workplace determination as quickly as possible. The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* amends the Act to require terms included in an intractable bargaining workplace determination, other than wage increase and agreed terms, to be not less favourable to employees or employee organisations than corresponding terms in the existing enterprise agreement which applies to them.

A workplace determination must include agreed terms. Currently, the Act assesses agreed terms at the time an intractable bargaining declaration is made or, if there is one, the end of any post-declaration negotiating period. The measure ensures that terms agreed by the bargaining parties at the time of making

an application for an intractable bargaining declaration and at subsequent steps in bargaining are included in any intractable bargaining workplace determination.

When will these changes come into effect?

The measure commenced on 27 February 2024.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>